IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6755 OF 1988

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

RAVJIBHAI MANUBHAI PATEL

VERSUS

TRIKAMBHAI BHIKHABHAI VANKAR & ANR.

Appearance:

MR DF AMIN for petitioner

MR JM PATEL for respondent No.1

MS HARSHA DEVANI for respondent No.2

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 27/04/2000

C.A.V. JUDGMENT

#. This special civil application is directed by the landlord under Article 227 of the Constitution against the order of the Gujarat Revenue Tribunal in Revision Application TEN/BA/588/85 dated 8th January, 1985. This revision application has been filed by the petitioner before the Gujarat Revenue Tribunal under Section 76 of the Bombay Tenancy & Agricultural Lands act, 1948, against the order of the Deputy Collector, Vadodara, in Tenancy Appeal No.36/81 decided on 12.12.1983, under which the order passed by the Mamlatdar and A.L.T., Padra in Tenancy Case No.5850 decided on 23.4.81 was reversed.

#. The facts of the case are that the Mamlatdar & A.L.T., Padra, suo-motu started an inquiry u/s.32(1B) of the Act aforesaid and under his order dated 24th May 1978 held that there was a valid surrender of the disputed agricultural land by the tenant, the respondent No.1 herein in favour of the landlord, the petitioner herein and therefore the tenant was not entitled to relief under the aforesaid Section. The tenant-respondent No.1 went in appeal against this order of the Mamlatdar and A.L.T., Padra, before the Deputy Collector, Vadodara. This appeal was decided by Deputy Collector, Vadodara, under its order dated 24th May 1978. The matter was remanded back to the Mamlatdar and A.L.T., Padra for rehearing thereof. In inquiry which was then held again by the Mamlatdar and A.L.T., Padra, he passed an order dated 23rd April 1981 holding thereunder that there was a valid surrender of the disputed agricultural land by the tenant-respondent No.1 in favour of landlord-petitioner. The tenant filed appeal before the Deputy Collector, Vadodara, which was registered as Appeal No.86 of 1981. This appeal came to be allowed in favour of tenant-respondent No.1 by the appellate authority under its order dated 12th December 1983. The Deputy Collector, Vadodara, held that on 1.4.57, the tenant was a deemed tenant and he further held that certain entries in the revenue record made are not correct. Accordingly, he held that the tenant was entitled to get back possession of the disputed agricultural lands under the provisions of Section 32(1B) of the Act aforesaid and directed that possession should be delivered and the purchase price should be determined u/s.32 of this Act. This order has been challenged by petitioner before the Gujarat Revenue Tribunal and the revision application came to be decided under the impugned order. The learned Gujarat Revenue Tribunal remanded the matter to the Deputy Collector, Vadodara with direction to hear the parties again and to decide the matter in the light of observations made by it in its order. The Tribunal has

considered it necessary to remand the matter to the appellate authority to address itself to the question whether the possession has been obtained by the landlord from the tenant in accordance with the provisions of Section 29 of the Act or under any other provision of the Act. The Tribunal observed that in this case the main question for determination is not whether it was a valid surrender of the land in dispute or not but the main question is whether the landlord has obtained possession of the land in the manner as provided in Section 29 of this Act or some other provisions of the Act or not.

#. From the judgment of the Tribunal, I find that it was the case of landlord that possession of the disputed land was voluntarily handed over by the tenant-respondent No.1 to him. Before the Tribunal, the learned counsel who were appearing for the parties were in agreement that the tenant-respondent No.1 was in possession of the land in dispute on the appointed day, i.e. 15.6.55, that he was dispossessed at some time before the specified date viz. 3.3.73, that the tenant is not in possession of the land now and the landlord is in possession of the land. The Tribunal on the basis of this admission of the learned counsel for the parties, proceeded that only question which requires to be examined is whether the only remaining requirement of Section 32(1B) of the Act is fulfilled or not?, i.e. whether the tenant has been dispossessed of this land by the landlord otherwise than in the manner provided in Section 29 of the Act or any other provisions of the Act?

#. The Tribunal though has taken it to be a case where the tenant has surrendered the possession but it has gone on the question whether this possession has been obtained by the landlord from the tenant in accordance with the provisions of Section 29 of the Act or any other provision of the Act.

#. The learned counsel for the petitioner contended that it is a case where there is a finding of fact recorded by the Tribunal that the tenant-respondent No.1 voluntarily surrendered the possession of the disputed land to the petitioner-landlord. It has next been contended that when it is a case of voluntary surrender of possession of disputed land by the tenant in favour of the petitioner-landlord, the requirement of Section 32(1B) of the Act is not required to be fulfilled and no relief could have been granted to the tenant. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of the apex court in the case of Dhondhiram Tatoba Kadam v. Ramchandra Balwantrao Dubal &

Anr., reported in 1995(1) GLR 344. The learned counsel for the petitioner submitted that this matter is squarely covered by this decision of the apex court. Voluntary giving up of the possession of the land by the tenant does not amount to dispossession against the law as provided and suo-motu proceedings started in the facts of the case by the Mamlatdar and A.L.T under Section 32(1B) of the Act are wholly without jurisdiction.

#. In contra, Mr.J.M.Patel, learned counsel for the respondent-tenant contended that it is not the case of voluntary surrender. It is a case where the tenant has been dispossessed from the suit land otherwise than as provided under Section 29 of the Act or any other provision of the Act and accordingly suo-motu proceedings have been started under Section 32(1B) of the Act by the Mamlatdar and rightly the appellate court has decided the matter in favour of tenant. The Tribunal has fallen in error, what Shri Patel contends, in remanding the matter back to the first appellate court. It has next been contended that it is an order of remand of the matter to the appellate court and this court may not interfere with the order. Whatever the contention which the learned counsel for the petitioner is raising before this court can be raised before the appellate authority and the appellate authority will decide whether this matter is covered under the decision of the apex court or not. In fact, the order of remand is interlocutory order. Nothing final has been decided by the Tribunal in favour of the tenant-respondent No.1 and in the remand order this court may not interfere as it will not result in causing any prejudice or otherwise effecting any of the right of the petitioner.

#. I have given my thoughtful considerations to the rival contentions made by learned counsel for the parties.

#. At the outset, I thought of not to interfere with the order of the learned Tribunal under which it has not decided anything finally regarding respective claims of the parties in the disputed agricultural land, but I find that this matter is squarely covered by decision of the apex court aforesaid and as such remand is nothing but only an exercise in futility. It is a case now to be decided finally so that unnecessarily the parties may not go on litigating. From the judgment of the Tribunal, I find that there are two entries bearing No.534 and 534/1 dated 29th June 1958. These entries recite that possession of the land in dispute had been handed over by the tenant-respondent No.1 to the landlord-petitioner by

way of mutual agreement. The statements of the tenant-respondent No.1 were also recorded and on the basis of which, order has been passed by Mamlatdar on 26th June 1957. In the presence of these facts, the Tribunal has rightly observed that from these facts, an inference can be drawn that the possession was delivered by the tenant to the landlord on some date earlier to 28th June 1957. In the presence of the statement of the tenant, I fail to see any relevance in the fact how and in what manner, possession was handed over by the defendant No.1 to the petitioner. Once voluntarily possession has been handed over of the land in dispute, it is not a case of dispossession therefrom and the provisions of Section 32(1B) of the Act are not attracted. In the year 1958, the tenant has applied for restoration of possession to him by filing application under Section 29 of the Act but lateron the same was withdrawn. In the facts of this case, it is wholly irrelevant whether the possession was taken by the landlord from the tenant in accordance with the provisions of Section 29 of the Act or not. The apex court in the case of Dhondhiram Tatoba Kadam v. Ramchandra Balwantrao Dubal & Anr. (supra), while considering the validity of the provisions of Section 32(1B) of the Act held that a tenant surrendering the land either in accordance with provisions of law or leaving possession voluntarily would not be covered under the expression "dispossession". From the facts of the case, I find that like the case before the apex court, in this case also, the tenant was not dispossessed from the land in dispute by the landlord. The apex court has further held that even if surrender was not valid, the tenant shall be deemed to have left the possession voluntarily. In either case it was not dispossession. In the facts of this case, the suo motu proceedings initiated by the Mamlatdar under section 32(1B) of the Act are without jurisdiction.

#. In the result, this special civil application succeeds and the same is allowed and the order of the Gujarat Revenue Tribunal dated 19.8.1988 in Revision Application No.TEN.B.A.588/85 and that of the Deputy Collector

12.12.1983 are quashed and set aside. Rule is made absolute with no order as to costs.

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(sunil)